IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 554 OF 2005

WITH

CIVIL APPLICATION NO. 1188 OF 2005

Evershine Products ..Appellants

versus

The Municipal Corporation

of Gr. Bombay & ors. ..Respondents

Mr. R. M. Pandey for the Appellants.

Mr. J. J. Xavier for the Respondent No.1.

Mr. J. G. Damani for the Respondents No. 2 to 5.

CORAM : D. G. DESHPANDE,J.

DATE : 29TH JUNE,2005

ORAL ORDER :

1. Heard Counsel for the Appellants, Respondent Nos. 2 to 5 and the counsel for the Respondent No.1 - MCGM.

2. The appellant who is a tenant of the ground floor of the premises filed a suit for declaration when he was served with notice under Section 351 in the year 1986. It was in respect of unauthorised construction of first floor admeasuring 54’ 6" x

23’-07" consisting of B. M. Walls and A.C. sheet roof. The suit came to be filed in 1986. The case of the appellant is that the structure was in existence prior to 1981 and as per the policy of the Municipal Corporation for Greater Mumbai (MCGM) all structures in the Bombay Talkies Compound prior to 1981 were tolerated even though they were used for the purposes other than residential purposes. The suit of the appellant came to be dismissed and hence this Appeal.

3. Counsel for the appellant contended that he was a tenant of the premises and the burden of proof as to when the first floor was erected was upon the landlord and even though the landlord was a party he did not produce any evidence. But according to him the burden can never shift on the tenant to prove the year of construction. This argument was immediately negatived by the counsel for the landlord who contended that the first floor was illegally constructed by the tenant and that there was no question of the landlord helping the tenant in proving the year of construction. 351 notice was not given in respect of the ground floor about which the landlord may have documents. But so far as the first floor is concerned, the landlord has no objection if the MCGM demolishes the structure because according to the landlord it was all illegal

construction without permission from the MCGM and without permission of the landlord.

4. The structure sought to be demolished is not a minor one or a small structure. It is a huge structure of entire first floor and ordinarily no landlord or owner of the property would allow such a huge structure to be demolished by the MCGM only for the sake of harassing the tenant.

5. Admittedly the appellant did not have any document with him to show that this structure of the first floor was after obtaining necessary permission from the MCGM. His claim was therefore rightly rejected.

6. counsel for the respondent - landlord also pointed out that though the suit was filed in 1986 the landlord was not at all joined in the suit as a party for about 14 years. The landlord was joined in 2000. This itself shows that the plaintiff - appellant had taken the entire burden and responsibility upon himself of proving the legality of the structure and if he has failed to discharge his burden, the suit was rightly dismissed.

7. Counsel for the appellant tried to contend that if the MCGM has taken a policy decision

regarding structures prior to 1981 in the Bombay Talkies Compound for regularisation, they they cannot be permitted to go back from its own policy. The question is not of the policy of the MCGM but the question is of a particular structure i.e. first floor as referred to in the Schedule annexed to notice under Section 351. There is no merit in this appeal. The same is dismissed along with Civil Application. Ad interim order stands vacated. Prayer for continuation of the ad interim order is rejected.

29.6.2005 (D.G. DESHPANDE, J.)